

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DEVIN MCNAIR

PLAINTIFF

v.

Civil No. 2:23-cv-124-HSO-BWR

**STATE OF MISSISSIPPI, COUNTY
OF FORREST, et al.**

DEFENDANTS

**ORDER ADOPTING THE MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION [36]; DENYING WITHOUT PREJUDICE
DEFENDANT OFFICER MARVIN ROSS’S MOTION [23] TO DISMISS, OR
IN THE ALTERNATIVE, MOTION TO STAY; DENYING WITHOUT
PREJUDICE OFFICER ROSS’S MOTION [25] TO STAY CASE; AND
GRANTING IN PART AND DENYING IN PART DEFENDANT STATE OF
MISSISSIPPI, COUNTY OF FORREST’S MOTION [32] FOR JUDGMENT
ON THE PLEADINGS**

Before the Court is United States Magistrate Judge Bradley W. Rath’s Report and Recommendation [36], recommending that this Court: (1) deny without prejudice Defendant Officer Marvin Ross (“Officer Ross”)’s Motion [23] to Dismiss, or in the alternative, Motion to Stay; (2) deny without prejudice Officer Ross’s Motion [25] to Stay Case; and (3) grant in part and deny in part Defendant State of Mississippi, County of Forrest (“Forrest County”)’s Motion [32] for Judgment on the Pleadings. *See* R. & R. [36] at 19. None of the parties have objected to the Report and Recommendation [36], and the time for doing so has passed. After due consideration of the Report and Recommendation [36], the record, and relevant legal authority, the Court will adopt the Report and Recommendation [36] in its entirety.

I. BACKGROUND

Pro se Plaintiff Devin McNair filed this lawsuit on August 30, 2023, alleging

violations of his civil rights by Defendants Forrest County and Officer Ross. *See* Compl. [1] at 1. When he filed his Complaint, Plaintiff was an inmate housed at the Forrest County Adult Detention Center in Hattiesburg, Mississippi. Envelope [1-1] at 1. He is now housed in the custody of the Mississippi Department of Corrections at the South Mississippi Correctional Institution in Leakesville, Mississippi. Envelope [12-2] at 1. Plaintiff proceeds *in forma pauperis*. Order [6].

On June 3, 2024, Officer Ross filed a Motion [23] to Dismiss or, in the alternative, Motion to Stay. *See* Mot. [23]. Officer Ross reurged his request as a Motion [25] to Stay Case the next day.¹ *See* Mot. [25]. On July 23, 2024, Forrest County filed a Motion [32] for Judgment on the Pleadings. *See* Mot. [32]. Plaintiff has not responded to any of these Motions [23], [25], and [32], and the time for doing so has passed.

On December 30, 2024, United States Magistrate Judge Bradley W. Rath entered a Report and Recommendation [36] recommending that this Court deny without prejudice Officer Ross's Motions [23] and [25], and grant in part and deny in part Forrest County's Motion [32] for Judgment on the Pleadings. *See* R. & R. [36] at 19. Specifically, Judge Rath recommends that:

Plaintiff's federal claims against Forrest County be dismissed with prejudice. Plaintiff should be allowed to clarify any state-law claims against both Defendants within a specified timeframe following the Court's ruling on this Report and Recommendation. Then, Plaintiff's federal claims against Officer Ross, plus any properly pled state-law

¹ Officer Ross's Motion [23] to Dismiss or, in the alternative, Motion to Stay is identical to his Motion [25] to Stay Case.

claims, should be tested for sufficiency at an Omnibus Hearing. *Id.* at 2. To date none of the parties have filed an objection to Judge Rath's Report and Recommendation [36], and the time for doing so has passed.

II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, a court need not conduct a de novo review. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Instead, this Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review to the report and recommendation. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted this required review, the Court concludes that the Report and Recommendation [36] is neither clearly erroneous nor contrary to law, and that it should be adopted as the opinion of this Court.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [36] of United States Magistrate Judge Bradley W. Rath entered in this case on December 30, 2024, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant Officer Marvin Ross's Motion [23] to Dismiss, or in the alternative, Motion to Stay and Motion [25] to Stay Case are both **DENIED WITHOUT PREJUDICE**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant State of Mississippi, County of Forrest's Motion [32] for Judgment on the Pleadings is **GRANTED IN PART AND DENIED IN PART**, in that Plaintiff's federal claims against Defendant State of Mississippi, County of Forrest are **DISMISSED WITH PREJUDICE**, and Plaintiff will have 21 days from the date of this Order to move to amend his Complaint to add or clarify any claims arising under state law.

SO ORDERED AND ADJUDGED, this the 30th day of January, 2025.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
CHIEF UNITED STATES DISTRICT JUDGE